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July 16, 2002

**By Hand Delivery**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-B204  
Washington, D.C. 20554

RECEIVED

JUL 16 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: **Ex parte presentation**  
**WC Docket No. 02-148: Application of Qwest Communications International, Inc.**  
**To Provide In-Region, InterLATA Services in the States of Colorado, Idaho,**  
**Iowa, Nebraska and North Dakota,**

Dear Ms. Dortch:

On July 9, 2002, Dan Waggoner and Randy Lowe of Davis Wright Tremaine LLP and John Fitzpatrick of Touch America, Inc. ("Touch America") met with Peter Gray, Joyce Hundley and Katherine Brown of the Department of Justice to discuss Touch America's comments in the above-referenced proceeding. At the meeting, Touch America distributed an outline summary of Touch America's comments in the proceeding.

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), and the Commission's Public Notice requesting comments in the above-referenced proceeding, DA 02-1390, issued June 13, 2002, Touch America hereby submits two copies of outline summary provided to the Department of Justice. Touch America also advises the Commission that on July 10, 2002, Randy Lowe, on behalf of Touch America, communicated with the Department of Justice with respect to Qwest's OSS, an issue that the parties discussed during the meeting the day before.

Touch America apologizes for its delay in submitting the material in this docket, but submits that no party has been adversely affected thereby as the material merely summarizes Touch America's comments, publicly filed with the Commission on July 3, 2002.

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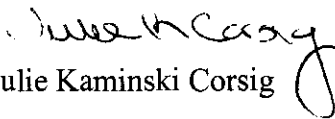


Enclosed please find two copies of the attached material. Please date stamp the "Stamp In" copy and return the same to me with the messenger.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Davis Wright Tremaine LLP

  
Julie Kaminski Corsig

cc: M. Carowitz  
E. Yockus  
G. Remondino  
M. Cohen  
J. Jewel  
P. Baker  
C. Post  
P. Fahn  
B. Smith  
P. Gray  
J. Hundley  
K. Brown  
Y. Doran

**Touch America's Request for Relief  
Qwest 271 Application****RECEIVED**

JUL 16 2002

**1. Deny the Application**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

- Qwest has failed to meet the 271 Checklist Requirements.
  - Qwest routinely fails to meet performance measurements
  - Qwest provides discriminatory access to its systems and databases
  - Qwest violates Section 271 through the sale of "lit capacity IRUs" and other in-region, InterLATA services
  - Although Qwest claims to have made regulatory-mandated changes to its OSS, these changes have not been tested; there has also been no "real world" testing of Qwest's OSS
- Qwest's "lit capacity IRU" agreements need to be investigated to determine whether they should have been filed as Interconnection Agreements and whether the IRUs should be unbundled under the Act as "UNEs".
- Approval of the Application is contrary to the Public Interest.
  - Qwest failed to divest its long distance operations to Touch America, thereby violating Section 271
  - Qwest has already been found three times in violation of Section 271
  - Qwest is a "bad actor"
    - Routinely makes misrepresentations to government regulators and competitors
    - Made a mockery of the post-divestiture audit process
    - Undertook a campaign designed to silence its critics and competitors
    - Unlawfully gained a competitive advantage through the provision of 271-prohibited activities

**2. Deny the Application as premature until resolution of the 271-related issues.**

- Before permitting Qwest to enter the in-region, interLATA market, the FCC must ensure that Qwest has not been unlawfully providing such services and, if it finds that Qwest has, require Qwest to take immediate and corrective action necessary to bring Qwest back to the "starting gate."

**3. If the FCC proceeds with the Application, it must ensure Qwest's future compliance with Sections 271 and 272.**

- Qwest must fully divest its in-region, interLATA assets and customer accounts that should have been divested at the time of its merger with US WEST.

- Qwest must be required to account for customers that should have been divested and certify to the FCC the manner in which each is rightfully divested.
  - The FCC must require a genuinely independent and comprehensive audit of the corrective actions taken by Qwest in divesting the in-region assets and accounts.
  - Qwest must fully disclose actions in withholding access to systems and data.
- The FCC must monitor and condition Qwest's activities to "win back" divested customers and require Qwest to report its "win back" marketing activities in order to identify any discriminatory marketing schemes.
4. **The FCC should establish an expedient process to resolve complaints related to ongoing Qwest violations.**
- The FCC should designate for a period of time an Enforcement Bureau team tasked with hearing and quickly resolving legitimate inter-carrier disputes related to Qwest's activities.
  - The FCC should establish a process for expedited review of "billing disputes" and ensure that Qwest does not cut off services during a billing dispute review.
  - Such measures are necessary in view of Qwest's unlawful conduct and how quickly Qwest may gain an otherwise potentially irreversibly strong foothold in the long distance through anti-competitive means.
5. **The FCC must ensure that Qwest's Performance Assurance Plan includes sufficient monitoring and remedies to address current and future anti-competitive conduct of Qwest and deter backsliding.**
- The QPAP must be "air tight" in light of Qwest's past actions.
  - The FCC and state commissions must be entitled to unilaterally modify the QPAP as future events require.
6. **The FCC must establish a genuine audit process to ensure a complete divestiture and to monitor Qwest's post-relief actions.**
- The Anderson audit makes clear the need for a truly "independent" audit.